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ATTACHMENT 4.35-A
Page 1
OMB No.: 0938-0193

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: MAINE

CRITERIA FOR THE APPLICATION OF SPECIFIED REMEDIES FOR
SKILLED NURSING AND INTERMEDIATE CARE FACILITIES

(When and how each remedy is applied, the amounts of any fines,
and the severity of the remedies)

The attached rule, Chapter I, Section 1, General Administrative Policies and Procedures, in the Maine Medical Assistance Manual, allows the Bureau of Medical Services to impose a sanction denying Medicaid reimbursement for residents admitted to an intermediate or skilled nursing facility following notification to the facility, and to the public, that the facility is operating in violation of certain federal laws. The statutory authority is 22 Maine Revised Statutes Annotated, Sections 42 and 3173, as well as 42 US Code, Section 1396 r (h).

Other specified remedies, such as the following, are contained in the enclosed Chapter 24, Enforcement, which was promulgated as an addition to the Regulations Governing the Licensing and Functioning of Skilled Nursing Facilities and Intermediate Care Facilities:

- Civil monetary penalties, assessed and collected with interest
- Appointment of temporary receivers to oversee the operation of the facility
- Authority in the case of an emergency to close the facility and transfer residents to other facilities or both

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CHAPTER I

SECTION I	GENERAL ADMINISTRATIVE POLICIES AND PROCEDURES	7/1/79
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1.04-1 Grounds for Sanctioning Providers (Cont.)

- K. Submission of a false or fraudulent application for Provider Status.
- L. Violation of any Laws, Regulations or Code of Ethics governing the conduct of occupations or professions or regulated industries..
- M. Conviction of a criminal offense relating to performance of a Provider Agreement with the State, negligent practice resulting in death or injury to patients, or misuse or misapplication of program funds.
- N. Failure to meet standards required by State or Federal law for participation (e.g. Licensure).
- O. Exclusion from Medicare because of fraudulent or abusive practices.
- P. Documented practice of charging recipients for services over and above that paid for by the Department.
- Q. Refusal to execute a new Provider Agreement when requested to do so.
- R. Failure to correct deficiencies in Provider operations after receiving written notice of these deficiencies from the Department.
- S. Formal reprimand or censure by an Association of the Provider's peers for unethical practices.
- T. Suspension or termination from participation in another governmental medical program such as Workman's Compensation, Crippled Children's Services, Rehabilitation Services and Medicare.
- U. Indictment for fraudulent billing practices or negligent practice resulting in death or injury to the provider's patients.
- V. Failure to repay or make arrangements for the repayment of identified overpayments or otherwise erroneous payments.

1.04-2 Sanctions

The following sanctions may be invoked against providers based on the grounds specified in Section 1.04-1.

- A. Termination from participation in the Medicaid Program;
- B. Suspension of participation in the Medicaid Program;
- C. Suspension or withholding of payments to a Provider;
- D. Referral to Peer Review;

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-7-

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CHAPTER I

SECTION I GENERAL ADMINISTRATIVE POLICIES AND PROCEDURES 7/1/79

1.04-2 Sanctions (Cont.)

- E. Transfer to a Closed-end Provider Agreement not to exceed 12 months or the shortening of an already existing closed-end Provider Agreement.
- F. Attendance at Provider Education Sessions.
- G. Prior Authorizations of Services;
- H. One-Hundred Percent Review of the Provider's claims prior to payment; and
- I. Referral to State Licensing Board for Investigation.
- J. If the provider is a nursing facility (an intermediate care facility or a skilled nursing facility as defined in Chapter 11, Section 50, ICF, ICF-MR, SNF Services, of this Manual), and if the grounds for this sanction are based on the provider's failure to comply with 42 U.S.C. 1396r, Subsections (b) Requirements Relating to Provision of Services, (c) Requirements Relating to Residents' Rights, and/or (d) Requirements Relating to Administration and Other Matters (refer to Section 1.04-1(N) of this Manual), then the Department may sanction the provider by denying payment for all Medicaid admissions which take place after the date on which the Department gives notice to both the provider, and to the public, that the provider is out-of-compliance with 42 U.S.C. 1396r (b), (c) and/or (d). Notwithstanding the delineation of provider appeal rights in Section 1.18 of this Manual, this sanction may be enforced immediately if the noncompliance jeopardizes the health and safety of residents or three months after the facility is notified of the noncompliance if the facility has not been brought into compliance within that three-month period. Hence, under these particular circumstances, this sanction may be enforced prior to and during the appeal process.

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1.04-3 Rules Governing the Imposition and Extent of SanctionA. Imposition of Sanction

- 1. The decision as to the sanction to be imposed shall be at the discretion of the Commissioner of the Department of Human Services except as provided in Subsection 3 below.
- 2. The following factors shall be considered in determining the sanction(s) to be imposed:
 - (A) Seriousness of the offense(s);
 - (B) Extent of violations;
 - (C) History of prior violations;

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ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

The State uses other factors described below to determine the seriousness of deficiencies in addition to those described at §488.404(b)(1):

The State does not use any other factors in determining the seriousness of deficiencies in addition to those described at §488.404(b)(1).

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